

**BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by )

**STATE COMPENSATION  
INSURANCE FUND** )

From the Executive Officer's decision dated )

September 12, 2000 Disapproving SCIF's )

Contract with Curiale, Dellaverson, Hirschfeld, )

**BOARD DECISION**

**PSC NO. 00-03**

March 6, 2001

**APPEARANCES:** Timothy K. Talbot, Attorney, on behalf of the Association of California State Attorneys and Administrative Law Judges; Charles W. Savage, Assistant Chief Counsel, State Compensation Insurance Fund, on behalf of State Compensation Insurance Fund

**BEFORE:** Ron Alvarado, President; William Elkins, Vice President; Florence Bos, Richard Carpenter and Sean Harrigan, Members.

**DECISION**

The State Compensation Insurance Fund (SCIF) has appealed from the Executive Officer's decision dated September 12, 2000, which disapproved the contract (Contract) SCIF entered into with the private law firm of Curiale, Dellaverson, Hirschfeld, Kelly & Kramer LLP (Curiale firm) to represent SCIF in a discrimination employment action entitled Gonzales v. SCIF. In this decision, the State Personnel Board (SPB or Board) finds that it has jurisdiction to review the Contract for compliance with Government Code § 19130, and that the Contract is not justified under Government Code § 19130(b)(3), (5), (8) or (10). The Board, therefore, sustains the Executive Officer's decision disapproving the Contract.

## **BACKGROUND**

Pursuant to the Contract, the Curiale firm was retained to represent SCIF in the Gonzales case, which was brought by a former SCIF employee, who alleged disability discrimination under the federal Americans with Disabilities Act of 1990 (ADA), Title VII of the federal Civil Rights Act of 1964, and the California Fair Employment and Housing Act.

ACSA asserts that civil service employees should have been used to perform those legal services instead of an outside contractor.

## **PROCEDURAL HISTORY**

By letter dated April 11, 2000, pursuant to Government Code § 19132, the Association of California State Attorneys and Administrative Law Judges (ACSA) asked SPB to review the Contract for compliance with Government Code § 19130(b).

SCIF submitted a letter dated May 15, 2000 that asserted that SPB does not have the authority to review SCIF's contracts for legal services. ACSA submitted letters dated May 25, 2000 and June 30, 2000 challenging SCIF's contention that its contracts for legal services are not subject to SPB review.

On July 17, 2000, SPB staff informed SCIF that it was staff's position that the Contract was subject to SPB review for compliance with Government Code § 19130(b), and requested SCIF's justification for the Contract under that statute and a copy of the Contract.

On July 28, 2000, SCIF submitted its justification for the Contract under Government Code § 19130(b), but refused to provide SPB with a copy of the Employment Practices Liability Insurance Policy (EPL Policy), the Contract pursuant to which the Curiale firm was retained.

On August 3, 2000, ACSA submitted its opposition to SCIF's justification. On August 8, 2000, ACSA submitted a letter requesting that SCIF submit a copy of the EPL Policy. By letter dated August 17, 2000, SCIF asserted that the EPL Policy was confidential and refused to submit it. The Executive Officer issued his decision dated September 12, 2000 disapproving the Contract. By letter dated September 27, 2000, SCIF requested that the Executive Officer reconsider his disapproval of the Contract. With that request, SCIF submitted a copy of the EPL Policy. ACSA opposed SCIF's request for reconsideration by letter dated September 28, 2000. On October 10, 2000, SPB staff informed SCIF and ACSA that the Executive Officer had decided to deny SCIF's request for reconsideration, but to consider that request to be an appeal to the Board from his September 12, 2000 decision. The Board has reviewed the record, including the written arguments of the parties, and heard the oral arguments of the parties, and now issues the following decision.

## **ISSUES**

- 1) Does the Board have jurisdiction to review the Contract for compliance with Government Code § 19130?
- 2) If so, is the Contract justified under Government Code § 19130(b)(3), (5), (8) or (10)?

## **DISCUSSION**

### **SPB's Jurisdiction**

SCIF asserts that the Contract is not subject to SPB review for compliance with Government Code § 19130. SCIF makes a number of arguments in support of this assertion.

First, SCIF argues that, given the "plenary power" Article 14, section 4 of the California Constitution expressly grants to the Legislature to create and enforce a workers' compensation

system, and the power the Legislature has vested in SCIF under Insurance Code §§ 11781 and 11783, SCIF's contracts are exempt from SPB review.

This argument is not well-taken. First, with respect to the workers' compensation system, the California Constitution grants plenary power to the Legislature, and not to SCIF. Second, pursuant to Insurance Code § 11783(b), SCIF is authorized to enter into only those contracts that "are authorized or permitted by law." Thus, SCIF does not have plenary power to enter into any contracts it wishes. Instead, in accordance with its own governing statutes, its contracts are subject to all applicable laws. Third, and most importantly, the California Supreme Court made clear in State Compensation Insurance Fund v. Riley (1937) 9 Cal.2d 126, and Burum v. State Compensation Insurance Fund (1947) 30 Cal.2d 575, that SCIF's contracts with private attorneys are subject to the state's civil service mandate, which "forbids private contracts for work that the state itself can perform 'adequately and competently.'"<sup>1</sup>

SCIF next argues that SPB cannot review its contracts for compliance with Government Code § 19130 because, pursuant to Public Contract Code §§ 10295, 10335 and 10430(c),<sup>2</sup> SCIF's contracts are not subject to certain provisions of the Public Contract Code, including Public Contract Code § 10337.<sup>3</sup> SCIF contends that, because SCIF's contracts are exempt from Public

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<sup>1</sup> Professional Engineers in California Government v. Department of Transportation (1997) 15 Cal.4th 543, 547. (PECG v. Caltrans)

<sup>2</sup> Public Contract Code § 10295(b)(6) exempts contracts entered into under Chapter 4 of Part 3 of Division 2 of the Insurance Code from review by the Department of General Services (DGS). According to SCIF, the Contract was entered into pursuant to Insurance Code § 11783(b), which is within that chapter. Public Contract Code § 10335 provides that contracts that are exempt from DGS review under Public Contract Code § 10295 are not subject to Article 4 of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. Public Contract Code § 10337 is in that article. Public Contract Code § 10430(c) provides that Chapter 2 of Part 2 of Division 2 of the Public Contract Code does not apply to any entity whose contracts are exempt from DGS review under Public Contract Code § 10295. Public Contract Code § 10337 is in that chapter.

<sup>3</sup> Public Contract Code § 10337, in relevant part, provides:

(a) The State Personnel Board may establish such standards and controls over approval of contracts by the Department of General

Contract Code § 10337, and SPB's authority to review contracts for compliance with Government Code § 19130 derives from Public Contract Code § 10337, SPB has no authority to review SCIF's contracts for compliance with Government Code § 19130. SCIF contends further that Government Code § 19130 and Public Contract Code § 10335 et seq. are inextricably intertwined. According to SCIF, the express exemption of SCIF from the procedures of Public

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Services as are necessary to assure that the approval is consistent with the merit employment principles and requirements contained in Article VII of the California Constitution. The substantive provisions of the standards shall be established at the discretion of the State Personnel Board. The specific procedures for contract review pursuant to such standards shall be established jointly by the board and the department.

It is the intent of the Legislature that except as provided in this section, the standards and controls established under this subdivision shall not be constructed in such a fashion or construed in such a manner as to authorize the State Personnel Board to establish a separate program for reviewing and approving each and every contract in the place of, or in addition to, the program administered by the Department of General Services pursuant to this article. The State Personnel Board may, when it has reason to believe that a proposed contract is not in compliance with the provisions of Section 19130 of the Government Code, and shall, when requested to do so by an employee organization representing state employees, direct a state agency to transmit the contract to it for review....

(c) A contract proposed or executed pursuant to subdivision (b) of Section 19130 of the Government Code shall be reviewed by the State Personnel Board if the board receives a request to conduct such a review from an employee organization representing state employees. Any such review shall be restricted to the question as to whether the contract complies with the provisions of subdivision (b) of Section 19130 of the Government Code. The board shall delegate the review of such a contract to the executive officer of the board. If the employee organization requests it, the executive officer shall grant the employee organization the opportunity to present its case against the contract and the reasons why the contract should be referred to the board for a hearing. Upon a showing of good cause by the employee organization, the executive officer shall schedule the disputed contract for a hearing before the board for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract. The executive officer shall approve or disapprove the contract or refer it to the board for a hearing within 30 days of its receipt. The reasons for the decision by the executive officer, or the board, approving or disapproving the contract shall be stated in writing....

Contract Code § 10337 acts to exempt SCIF from the standards set forth in Government Code § 19130.

Contrary to SCIF's assertions, SPB's authority to review contracts for compliance with Government Code § 19130 does not derive from Public Contract Code § 10337.<sup>4</sup>

Instead, it derives from the California Constitution and the State Civil Service Act.

Under Section 3(a) of Article VII of the California Constitution, the Board is required to "enforce the civil service statutes." The civil service statutes are found in the State Civil Service Act, Government Code § 18500 et seq. Government Code §§ 19130 and 19132 are two of the civil service statutes within the State Civil Service Act that the Board is constitutionally required to enforce.

Pursuant to Government Code § 19132, the Board is required to review a state personal services contract for compliance with Government Code § 19130(b) when such review is requested by an employee organization.<sup>5</sup> ACSA properly invoked Board review under Government Code § 19132 when it requested that the Board review the Contract in this case.

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<sup>4</sup> The Public Contract Code generally sets forth the laws that DGS administers and enforces. The provisions of the Public Contract Code cited by SCIF generally exempt SCIF's contracts from DGS review. A primary purpose of Public Contract Code § 10337 is to delineate the sometimes overlapping responsibilities of DGS and SPB with respect to the review of state personal services contracts.

<sup>5</sup> Government Code § 19132 provides:

The State Personnel Board, at the request of an employee organization that represents state employees, shall review the adequacy of any proposed or executed contract which is of a type enumerated in subdivision (b) of Section 19130. The review shall be conducted in accordance with subdivision (c) of Section 10337 of the Public Contract Code. However, a contract that was reviewed at the request of an employee organization when it was proposed need not be reviewed again after its execution.

While Public Contract Code §§ 10295, 10335 and 10430(c) may exempt SCIF's contracts from Public Contract Code § 10337, there is no explicit language in those statutes that exempts SCIF's contracts from the mandatory Board review required by Government Code § 19132. Even though Government Code § 19132 may refer to Public Contract Code § 10337(c) for procedures the Board must follow when it conducts the mandated contract reviews, the Board cannot infer from this reference that the Legislature intended to exempt SCIF's contracts from Government Code § 19132 when it enacted Public Contract Code §§ 10295, 10335 and 10430(c) in the absence of clear exemption language in those statutes. SCIF has not cited to any law that would permit the Board to draw such an inference. To the contrary, the law appears clear that the Board may not read an exemption into a statute where such an exemption does not clearly appear in the language of the statute.<sup>6</sup>

Pursuant to Insurance Code § 11873(b), SCIF is expressly subject to the civil service statutes.<sup>7</sup> SCIF's in-house counsel staff are civil service employees, who are protected by Article VII of

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<sup>6</sup> See Code of Civil Procedure § 1858; California Teachers Association v. San Diego Community College District (1981) 28 Cal. 3d 692, 698 ("If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.")

<sup>7</sup> Insurance Code § 11873 provides:

- (a) Except as provided by subdivision (b), the fund shall not be subject to the provisions of the Government Code made applicable to state agencies generally or collectively, unless the section specifically names the fund as an agency to which the provision applies.
- (b) The fund shall be subject to the provisions of Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of, and Division 5 (commencing with Section 18000) of Title 2 of, the Government Code, with the exception of all of the following:
  - (1) Article 1 (commencing with Section 19820) and Article 2 (commencing with Section 19823) of Chapter 2 of Part 2.6 of Division 5 of Title 2 of the Government Code.
  - (2) Sections 19849.2, 19849.3, 19849.4, and 19849.5 of the Government Code.
  - (3) Chapter 4.5 (commencing with Section 19993.1) of Part 2.6 of Division 5 of Title 2 of the Government Code.

the California Constitution and the State Civil Service Act, including Government Code §§ 19130 and 19132. Government Code § 19130 codifies the exceptions to the civil service mandate that various court decisions have recognized. SCIF has not cited to any statutory provisions that would exempt its personal services contracts from review by the Board under Government Code § 19132 for compliance with Government Code § 19130. The Board, therefore, has jurisdiction to review the Contract for compliance with Government Code § 19130.

Finally, SCIF argues that the Board cannot review the Contract because it is a contract of insurance.

On July 17, 2000, Board staff denied SCIF's assertions that it was not subject to Board review and asked SCIF to submit a copy of the Contract and its Contract justification. In its July 28, 2000 response, SCIF refused to provide a copy of the Contract, but stated that it had retained the Curiale firm in accordance with the EPL Policy. SCIF also provided its asserted justifications for the Contract under Government Code § 19130(b).

In its letter dated August 8, 2000, ACSA insisted that SCIF submit a copy of the EPL Policy to SPB. SCIF, citing confidentiality concerns, adamantly refused. In his September 12, 2000 decision, the Executive Officer made clear that, because SCIF had not submitted a copy of the EPL Policy, in reaching his decision, he could not take into consideration any of that policy's

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The State Civil Service Act is in Division 5, Title 2 of the Government Code. It appears that, if the Legislature intended to exempt SCIF from Government Code §§ 19130 and 19132, which are within the State Civil Service Act, it would have expressly included such exemptions in Insurance Code § 11873 in the same manner as the other express Government Code exemptions are now included. In the absence of such exemptions, by the express terms of Insurance Code § 11873, SCIF is subject to Government Code §§ 19130 and 19132. See, *Courtesy Ambulance Service of San Bernardino v. Superior Court* (1992) 8 Cal.App.4th 1504, 1513–1514, n. 7. (The court found that because Insurance Code § 11873 did not expressly subject SCIF to Government Code § 818, SCIF was not entitled to that provision's protection from punitive damages. In contrast, the court recognized that, given the explicit exemptions set forth in Insurance Code § 11873, SCIF is subject to the Government Code's civil service employment provisions.)



terms or conditions, but, instead, was basing his decision solely upon the information SCIF and ACSA had provided.

It was not until September 27, 2000, after the Executive Officer had issued his decision, that SCIF finally submitted the EPL Policy and asked the Executive Officer to reconsider his decision in light of the insurance issues that policy raised.

In its September 28, 2000 letter, ACSA, citing to Board Rule 547.66,<sup>8</sup> objected to SCIF's belated submission of the EPL Policy and the insurance-related arguments as follows:

ACSA also objects to SCIF's belated effort to present you with information that it previously refused to provide, despite repeated requests that it do so. Pursuant to section 547.62 of Title 2 of the California Code of regulations, SCIF was obligated to present information to the SPB within 15 days after receiving a copy of ACSA's request for review of the personal services contract. The SPB made several subsequent requests for SCIF to provide it with copies of the personal services contract, but SCIF persisted in its refusal.

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<sup>8</sup> Board Rule 547.66, Title 2, Section 547.66 of the California Code of Regulations, provides as follows.

Appeal from an Executive Officer's Decision. Any party may appeal the executive officer's decision to the board by filing a written request with the board within 30 days after issuance of the executive officer's decision. (See Section 547.64(b).) Upon receipt of a timely appeal, the executive officer shall schedule the matter for briefing and oral arguments before the board. The board will decide the appeal upon the factual information, documentary evidence, and declarations submitted to the executive officer before he or she issued his or her decision. Upon the objection of a party, the board will not accept additional factual information, documentary evidence, or declarations that were not previously filed with the executive officer if the board finds that the submission of this additional factual information, documentary evidence, or declarations would be unduly prejudicial to the objecting party.

SCIF was afforded ample opportunity to present the SPB with all information it considered relevant on this matter prior to the issuance of [the Executive Officer's] decision. Given SCIF's prior conduct, we object to the SPB accepting any additional information from SCIF at this point. See id. § 547.66 (upon the filing of an appeal a party may object to the SPB accepting additional information and evidence not previously presented to the Executive Officer).

The Board sustains ACSA's objection. SCIF, by its steadfast refusal to submit a copy of the EPL Policy and its failure to raise its insurance-related arguments before the Executive Officer issued his decision, deliberately deprived the Executive Officer of information it now asks the Board to consider in support of its position.<sup>9</sup> The Board finds that consideration of the EPL Policy and SCIF's insurance arguments would be unduly prejudicial to ACSA. The Board will, therefore, not consider them in reaching its decision in this matter.

**The Contract is not justified under Government Code § 19130(b)**

**Government Code § 19130(b)(3)**

Government Code § 19130(b)(3) authorizes a state agency to enter into a personal services contract with a private entity when:

The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly

specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

SCIF contends that the Contract is justified under Government Code § 19130(b)(3) because SCIF's in-house attorneys traditionally have not defended employment discrimination cases or been required to demonstrate the ability to defend complaints brought under the ADA.

According to SCIF, the Curiale firm is providing highly specialized legal services and has expert knowledge, experience and ability that are not available within the ranks of SCIF's civil service in-house counsel. SCIF asserts that the Curiale firm is, therefore, uniquely qualified to represent SCIF in Gonzales.

In order to comply with Government Code § 19130(b)(3), an agency must show that the contracted services are not available within the civil service. While SCIF's in-house counsel may not possess the expert knowledge, skill or ability to defend against a complex disability discrimination law suit, many attorneys within the state's civil service have the requisite expertise and experience to do so, including attorneys within the Attorney General's Office. SCIF argues that, although the Attorney General's Office may represent other state agencies in complex discrimination lawsuits, pursuant to Government Code §§ 11040 and 10411, the Attorney General's Office is not required to defend SCIF in such cases.

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<sup>9</sup> Cf., Andrew Ingersoll (2000) SPB Dec. No. 00-01, at p. 15. (The Board refused to hear the respondent's statute of limitations and exhaustion of remedies defenses because the respondent had not raised those defenses during the hearing before the administrative law judge (ALJ). As the Board stated, "To establish a complete hearing record, it was incumbent upon each party to have raised all legitimate issues and defenses before the ALJ so that the other party could have responded to those issues and defenses during the evidentiary hearing and the ALJ could have addressed them in her Proposed Decision.")

Government Code § 11041(a)<sup>10</sup> exempts SCIF from having to appoint the Attorney General as counsel to represent SCIF in legal matters. Government Code § 11040(c)<sup>11</sup> exempts SCIF from having to obtain the Attorney General's consent prior to retaining outside counsel.

Even though, under Government Code §§ 11040 and 11041, SCIF may not be *required* to obtain prior Attorney General consent before retaining its own in-house or outside legal counsel to represent it in litigation, nothing in those statutes precludes SCIF from seeking Attorney General representation when SCIF is sued in an action that SCIF's in-house lawyers are not qualified to defend. There is no evidence in this case that shows that SCIF ever asked the Attorney General's Office to represent it in Gonzales and was turned down.<sup>12</sup>

In any event, the provisions of Government Code §§ 11040 and 11041 do not exempt the agencies named therein, including SCIF, from complying with the provisions of Government Code § 19130 when retaining outside counsel.<sup>13</sup> Because many attorneys within the civil service, including those within the Attorney General's Office, are qualified to represent state agencies in disability discrimination lawsuits, and because SCIF has not shown that it ever asked any of those attorneys for representation and was denied, SCIF has not shown that the contracted

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<sup>10</sup> Government Code § 11041(a) in relevant part, provides: "Sections 11042 and 11043 do not apply to the ... State Compensation Insurance Fund... nor to any other state agency which, by law enacted after Chapter 213 of the Statutes of 1933, is authorized to employ legal counsel. " Government Code § 11042 provides that "No state agency, commissioner, or officer shall employ any legal counsel other than the Attorney General, or one of his assistants or deputies, in any matter in which the agency, commissioner, or officer is interested, or is a party as a result of office or official duties."

<sup>11</sup> Government Code § 11040(c) provides that, "Except with respect to employment by the state officers and agencies specified by title or name in Section 11041 or when specifically waived by statute other than Section 11041, the written consent of the Attorney General is required prior to employment of counsel for representation of any state agency or employee in any judicial proceeding."

<sup>12</sup> The Attorney General's Office's March 29, 2000 letter, which forwarded the complaint in Gonzales to SCIF, does not indicate that the Attorney General's Office refused to provide a defense to SCIF after it was requested to do so. Instead, that letter merely repeated the information that SCIF had provided that the Attorney General's Office did not have a role in defending SCIF in that type of case.

<sup>13</sup> See, People ex rel. Department of Fish and Game v. Attranco, Inc. (1996) 50 Cal.App.4th 1926

services are not available within civil service or could not be satisfactorily performed by civil service employees. SCIF has, therefore, failed to show that the Contract complies with Government Code § 19130(b)(3).

Government Code § 19130(b)(5)

Government Code § 19130(b)(5) authorizes a state agency to enter into a personal services contract with a private entity when:

The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective.

SCIF contends that, given the conflicts of interest inherent in an employment discrimination/retaliation lawsuit between a former employee and his employer, the Contract is justified under Government Code § 19130(b)(5) because it provides for an independent, unbiased and outside perspective free from such inherent conflicts of interest.

Government Code § 19130(b)(5) allows a state agency to contract with a private contractor when the legislative, administrative or legal goals of the state agency cannot be accomplished through the use of civil service personnel. In order to meet the conditions of Government Code § 19130(b)(5), a state agency must show either that civil service personnel would have a conflict performing the contracted services or that there is a clear need for a different or outside perspective to ensure independent and

unbiased findings. SCIF has not shown that either of these conditions exist in this case: it has not submitted sufficient information to show either that all of its own in-house counsel, or that counsel from the Attorney General's Office whom it may have been able to retain to defend it in Gonzales, had impermissible conflicts of interest that would have prevented them from representing SCIF.<sup>14</sup> Furthermore, it did not present any information to show that there was a clear need for a different or outside perspective in Gonzales. From a review of the complaint in that litigation, it appears that the action involves the type of disability discrimination allegations that state attorneys defend against on a fairly regular basis.

SCIF has, therefore, failed to show that the Contract is justified under Government Code § 19130(b)(5).

Government Code § 19130(b)(8)

Government Code § 19130(b)(8) authorizes a state agency to enter into a personal services contract with a private entity when:

The contractor will provide equipment, materials, facilities,  
or support services that could not feasibly be provided by the state  
in the location where the services are to be performed.

SCIF contends that the Contract is justified under Government Code § 19130(b)(8) because the Curiale firm has the ability to provide specialized legal knowledge, materials, and support

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<sup>14</sup> SCIF asserts that the Attorney General's Office has a conflict of interest in representing SCIF in Gonzales because it has represented the Department of Insurance in an action against SCIF. While the Attorney General's Office may have represented the Department of Insurance in a case against SCIF, such representation does not, in itself create an impermissible conflict of interest precluding all Deputy Attorney Generals from representing SCIF in unrelated litigation.

services. SCIF does not have the expertise or the resources to handle a complex employment discrimination case that seeks civil damages for alleged violations of both state and federal laws. According the SCIF, Gonzales is currently venued in the U.S. District Court for the Eastern District of California. The offices of that court are located in Sacramento and Fresno. Clearly, the state has attorneys who work in those two locales that have sufficient equipment, materials, facilities, and support services necessary to defend against a disability discrimination lawsuit. The information submitted by SCIF does not substantiate that the Curiale firm will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed. SCIF has, therefore, failed to show that the Contract complies with Government Code § 19130(b)(8).

Government Code § 19130(b)(10)

Government Code § 19130(b)(10) authorizes a state agency to enter into a personal services contract with a private entity when:

The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

SCIF contends that the Contract is justified under Government Code § 19130(b)(10) because the services provided by the Curiale firm are of such an urgent and temporary nature that the delay incumbent in their implementation under civil service would frustrate their very purpose. SCIF asserts that it does not have available staff counsel to respond promptly to all of the exigencies of employment discrimination litigation, and that it would be impractical for SCIF to create a separate legal department to handle unique employment discrimination cases should they arise.

SCIF has not presented any facts to show that its need for legal counsel in Gonzales was so urgent and temporary that it could not have retained state civil service counsel in sufficient time to proffer a defense. As set forth above, Gonzales asserts the types of disability discrimination allegations regularly defended by the Attorney General's Office in the ordinary course of their work. There is nothing in the record to suggest that the Attorney General's Office could not have represented SCIF in Gonzales as expeditiously or as well as the Curiale firm. Because SCIF has not presented sufficient justification to support that the legal work contracted to the Curiale firm was so urgent or temporary that the delay incumbent in having civil service employees perform it would have frustrated its very purpose, it has failed to establish that the Contract is justified under Government Code § 19130(b)(10).

### **CONCLUSION**

The Board finds that SCIF has failed to justify the Contract under either Government Code §§ 19130(b)(3), (5), (8) or (10). The Board, therefore, sustains the Executive Officer's decision disapproving the Contract. The Contract is disapproved only to the extent of the retention of the Curiale firm to defend SCIF in Gonzales v. SCIF. The Board takes no action on the remaining terms and conditions of the EPL Policy.

### **STATE PERSONNEL BOARD**

Ron Alvarado, President

William Elkins, Vice President

Florence Bos, Member

Richard Carpenter, Member

Sean Harrigan, Member



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I hereby certify that the State Personnel Board made and adopted the foregoing  
Decision at its meeting on March 6, 2001.

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Walter Vaughn  
Executive Officer  
State Personnel Board

[SCIF-ACSA-00-03]